REMARKS

This amendment is submitted in response to the Advisory Action mailed December 18, 2008 and Final Office Action mailed September 4, 2008, in connection with the above-identified application (hereinafter, the "Office Action"). Accompanying this response is a Petition for Extension of Time for two months from December 4, 2008, to and including, February 4, 2009. Accordingly, this amendment is timely submitted.

I. Pending Claims

Claims 1-16, of which claims 1 and 8 are independent, remain pending. New claims 17-24 have been added to provide additional features of the present invention.

Independent claims 1 and 8 have been amended by the incorporation of the phrase "wherein said moisturizer comprises an oily material and" after the term "applying a moisturizer to said scalp." Support for the above amendments may be found in the entire specification, particularly at page 6, lines 13-19.

New dependent claims 17 and 19, both of which are dependent on method claim 1 and kit claim 8, respectively, provide that moisturizes further includes moisturizing agents that range from about 5% to 70% by weight of the moisturizer.

New dependent claims 18 and 20, both of which are dependent on new method claim 17 and new kit claim 19, respectively, provide that moisturizes further includes moisturizing agents that range from about 10% to 50% by weight of the moisturizer.

New independent method claim 21 and kit claim 23 provide that the moisturizes includes (1) an oily material and (2) moisturizing agents that range from about 5% to 70% by weight of said moisturizer. New dependent claims 22 and 24, both of which are dependent on new claims 21 and 23, respectively, provide that the moisturizing agents range from about 10% to 50% by weight of the moisturizer.

Support for the addition of the new claims may be found in the entire specification, particularly at page 6, lines 13-19.

No new matter is introduced by these amendments. Therefore, they all should be entered at this time.

Applicant reserves the right to pursue the withdrawn claims in a divisional or

continuation application, if not rejoined upon allowance of the pending product claims. Applicant does not acquiesce in the correctness of the rejections or objections and reserve the right to present specific arguments regarding any rejected or objected-to claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the claims in a subsequent patent application that claims priority to the instant application.

Applicant respectfully submits that the rejections based on lack of obviousness are overcome in view of the amendments and arguments presented in the response. Applicant, therefore, respectfully requests that all amendments be entered at this time and reconsideration of this application in view of the above amendments and the following remarks presented hereinbelow.

II. Rejection under 35 U.S.C §103(a)

Claims 1-2, 5-10 and 13-16 have been rejected under 35 U.S.C §103(a), for being unpatentable for obviousness over U.S. Patent No. 6,043,202 to Eriksen et al. (hereinafter "Eriksen"), in view of U.S. Patent No. 4,478,853 to Chaussee.

Eriksen generally describes a shampoo composition, an oil composition and a method for the treatment of cradle cap for children and infants. Ericksen's method involves treating the infant's scalp with the oil composition, followed by gently brushing and contacting the scalp with the shampoo and water. After 1-5 days, the cradle cap condition is usually eliminated. Ericksen also generally describes a kit that includes the various components.

In contrast to Ericksen, however, the present invention, particularly as set forth in amended independent claims 1 and 8, as well as the claims that depend therefrom, relates to a method for mitigating the presence of scales on an infant's scalp caused by cradle cap that includes the following sequential steps: (1) loosening the scales by massaging a pre-treatment composition into infant's scalp; (2) using a scale-removing device to remove the scales from the scalp; (3) cleaning the scalp by using a shampoo; and (4) applying a moisturizer to the scalp, wherein the moisturizer is an oily material. The pre-treatment composition, scale-removing device, shampoo and moisturizer, according to the claimed invention, are all included in a single secondary package. In addition, the pre-treatment composition has a viscosity that ranges from

about 3,450 to 3,600 cps, as measured by an RVT viscometer with a TA spindle rotating at 10 rpm.

In addition, Ericksen's method does not involve applying a moisturizer, which is made up of an oily material, to the scalp after cleansing the scalp with the shampoo. This claimed feature is absent in Ericksen and was acknowledged in the Office Action at page 4.

To cure this deficiency, the Office Action cited a secondary reference, Chaussee, and asserted that Chaussee describes and suggests the use of a moisturizer, which imparts "enhanced emoliency or moisturizing properties and provides extended protection against formation of dry, scaling skin or inhibiting scaling, flaking, drying and other causes of skin irritation."

Chaussee generally describes skin conditioning compositions for providing conditioning and protection against dryness. Chaussee's skin conditioning composition includes a hydroalcoholic gel, a silicone gel, a neutralized gelling agent, and a base that includes a panthenol moisturizer and emollient, which is a polyhydric alcohol humectant.

Applicants respectfully submit that Chaussee, like Eriksen, fails to describe and suggest the presently claimed invention. In particular, Chaussee fails to provide any teaching or suggestion for using the moisturizing composition that is made up of an oily material, as set forth in presently-amended independent claims 1 and 8. In fact, Chaussee's moisturizing composition is a "non-oily, non-occlusive, water-soluble base composition." See Chaussee at column 2, lines 15-16 and 28-29.

As noted, the base composition of Chaussee's moisturizer contains higher concentration of alcohol or alcohol derivatives than that used in claimed method. In several examples provided by Chaussee, the alcohol is present in amounts ranging from about 55% by weight or from about 35% to 50% by weight of the moisturizer. For example, see Chaussee at column 4, lines 30-41; column 7, lines 12-17; and column 7, lines 34-39. In contrast, the claimed method employs a moisturizer that does not have a level of alcohol as that of Chaussee. In addition, the aggregate concentration of the moisturizer employed by the claimed method contains moisturizing agents ranging from about 5-70% or about 10%-50% by weight of the moisturizer. See specification at page 6, lines 16-18.

Furthermore, Chaussee even stated that the "panthenyl moisturizer of the present invention provides increased emolliency, reduces the tendency of skin to scale....without occluding the skin pores or forming the oily greasy, film which characterizes petroleum jelly,

mineral oil or lanolin formulations." See Chaussee at column 3, lines 7-10. This is contrary to Ericksen, which uses oil components and allow the oil to loosen the cradle cap scales, as in the presently-claimed invention.

Furthermore, Chaussee fails to provide any teaching or suggestion for using the skin moisturizing composition with treatments that already claim to remove scaly layers and reduce the tendency of skin to scale, as taught in Eriksen. More specifically, although Chaussee generally describes dry scalp treatment conditions, Chaussee contemplates that the compositions are the only source of skin and scalp conditioning treatment after use of shampoos or detergents that may dry the scalp. Thus, Chaussee fails to describe or suggest the skin conditioning treatment as a necessary step after shampooing, if the shampoo composition itself contains conditioning properties or if some other type of conditioning is provided. As shown in Examples IX and X, Chaussee describes or suggests combining the conditioning treatment with a shampoo composition. Accordingly, there is no suggestion or any hint to combine the skin conditioning composition, as taught by Chaussee, as a last step to the cradle cap treatment method of Eriksen since Ericksen itself describes or suggests a moisturizing shampoo as the final step to the treatment of cradle cap.

Contrary to Eriksen and Chaussee, the claimed invention not only contemplates the need for additional moisturizing beyond the initial conditioning step, scale removal step and cleansing step, all in sequential order, but provides a solution as a final step beyond merely shampooing the scalp. Neither Eriksen nor Chaussee describes or suggests this additional moisturizing step for cradle cap treatment in infants. Applicants, therefore, respectfully submit that a person of ordinary skill in the art, looking at both Eriksen and Chaussee, would find no motivation to combine the Chaussee's non-oily conditioning composition with Eriksen's shampoo composition and oil composition, as set forth in the presently claimed invention, to resolve the problems of dry scales on the scalp of infants. Applicants also respectfully submit that such a combination would only be a result of hindsight reconstruction based on the teachings and claims in the present application and not in the cited primary and secondary references, which lead away from the claimed invention.

In view of the remarks presented hereinabove and claim amendments, Applicants respectfully submit that the claims, as presently amended herein, are patentable in view of

Eriksen and Chaussee. Thus, Applicant respectfully requests the reconsideration and withdrawal of the claim rejections.

Claims 1-4 and 8-12 have been rejected under 35 U.S.C §103(a) as being unpatentable for obviousness over Eriksen, in view of Chaussee, as applied above and in further view of U.S. Patent Publication No. 2002/0039591 to Dahle and in still further view of U.S. Patent No. 5,221,534 to DesLauriers et al. (hereinafter "DesLauriers"). Applicant respectfully disagrees with this claim rejection in view of the following remarks.

The Office Action acknowledged that both the primary and secondary references, Eriksen and Chaussee, fail to describe or suggest the use of a mineral oil, as described by the tertiary reference, Dahle, or gelled mineral oil, as described by the quaternary reference, DesLauriers, as an ingredient of the pretreatment composition for loosening the scales on an infant having cradle cap. To remedy these deficiencies, the Office Action cited both Dahle and DesLauriers to cure the inadequacies of the primary and secondary references.

Similar to Chaussee, both Dahle and DesLauriers also fail to cure the serious deficiencies of Eriksen, as noted hereinabove and discussed in earlier responses. Additionally, the tertiary and quaternary references fail to cure the deficiencies of Chaussee, which itself teaches away the application of oily compositions to its non-oily moisturizing compositions. Applicants respectfully submit that a person of ordinary skill in the art would not be motivated to combine these four references to have a reasonable expectation of success to arrive at the presently-claimed invention.

In view of the arguments presented above and incorporated herein, and in light of the claim amendments, Applicant respectfully submits Dahle and DesLauriers, like Chaussee, do not cure the deficiencies of Eriksen and they all fail to provide the requisite suggestion. Thus, the claims are believed to be patentable over Eriksen, in view of Chaussee, Dahle and DesLauriers. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the claims.

CONCLUSION

For at least the reasons set forth above, this application is in condition for allowance. Favorable consideration and prompt allowance of the claims are earnestly requested. Should the Examiner have any questions that would facilitate further prosecution or allowance of this application, the Examiner is invited to contact the Applicant's representative designated below.

The Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. §1.17, which may be required or credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

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